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6 UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 BOBBY COLBERT,

9 Petitioner,

10 v.

11 JIM McDONALD,

12 Respondent.  
13

CASE NO. 2:08-cv-00870-RSL

ORDER GRANTING CERTIFICATE  
OF APPEALABILITY

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15 This matter comes before the Court on the Ninth Circuit Court of Appeals order  
16 remanding this case for the limited purpose of granting or denying a certificate of  
17 appealability with regards to the undersigned's recent denial of petitioner's request to  
18 vacate judgment. Having considered the order and the remaining file, the Court finds as  
19 follows:

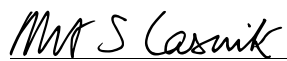
20 In April 2009, the Court denied petitioner's request for a writ of habeas corpus on  
21 the merits. The Ninth Circuit affirmed the dismissal of the petition for writ of habeas  
22 corpus on exhaustion grounds. In July 2024, petitioner filed a motion for relief of judgment  
23 and judicial notice, requesting that the Court vacate the final judgment in this matter to  
24 allow him to pursue a Brady claim: the Skagit County Superior Court has apparently  
25 expanded the state court record to include a Washington State Patrol Crime Laboratory  
26 Report. The motion to vacate judgment was denied because the Ninth Circuit's dismissal

1 was on exhaustion grounds, an issue that is not altered by the potential *Brady* violation  
2 identified by petitioner.

3 To obtain a certificate of appealability under 28 U.S.C. § 2253(c), a habeas  
4 petitioner must make a substantial showing of the denial of a constitutional right.  
5 “Obviously the petitioner need not show that he should prevail on the merits. He has  
6 already failed in that endeavor.” *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983). Rather,  
7 he must demonstrate that the resolution of the habeas petition is debatable among  
8 reasonable jurists or that the issues presented were “adequate to deserve encouragement to  
9 proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Where a petition is  
10 dismissed on procedural grounds, the Court must determine whether “jurists of reason”  
11 would debate (1) whether the petition states a valid claim of the denial of a constitutional  
12 right and (2) whether the district court’s procedural ruling was correct. *Slack*, 529 U.S. at  
13 484.

14 The Court finds that the rejection of petitioner’s Rule 60 motion on exhaustion  
15 grounds may be debatable among reasonable jurists. The certificate of appealability is  
16 therefore GRANTED on that issue.

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18 Dated this 19th day of September, 2024.

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21 Robert S. Lasnik  
22 United States District Judge  
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